

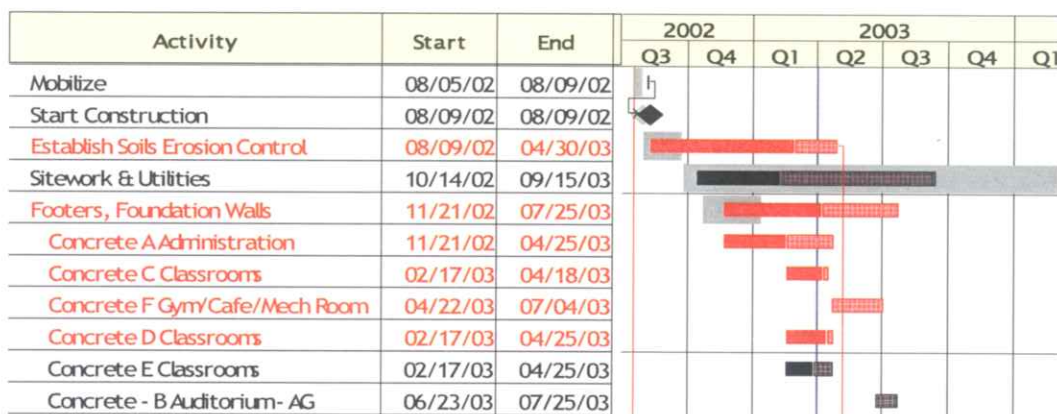
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- NDK has been directed to focus on Areas A, E, D and C to prepare for structural steel erection. These areas must be complete by 4/18/03.
- Murphy is 90% fabricated on Area A steel. Steel will arrive 4/21/03.
- Area F is the only remaining shop drawing (Steel) to need approval. EDiS will investigate
  - (These submissions were to have been complete November 7<sup>th</sup>, 2002, five months earlier)
- It was noted that slabs on grade for Areas E, D and C need to be poured as soon as possible to keep masons on project.
- Areas C, D and E are ready for stone
- Underground plumbing is 90% complete in Areas A, C, D and E
- EDiS requested Tieder start their under slab utility immediately following the work by McDaniel (Tieder to start on 4/2/03)

As a result of these attested progress events the contract project baseline schedule with initial revision defined logic would suggest the following impact as of April 1<sup>st</sup>, 2003 for:

#### Footer, Foundation Wall Construction



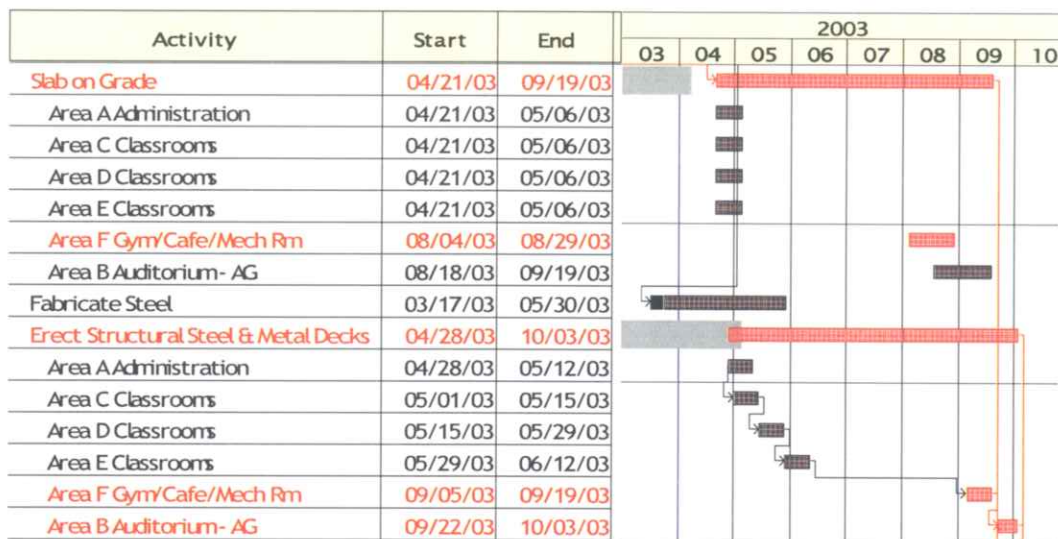
#### Under slab MEP Rough

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## Slabs on Grade &amp; Structural Steel Placement



## Remaining Performance

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Therefore as of April 1<sup>st</sup>, 2003, using reported expectations for footing, foundation, U/G, Slab on Grade and Steel Placement, in conjunction with the contract schedule logic, the impacted contract completion date is October 19<sup>th</sup>, 2004 for the substantial completion, and December 22<sup>nd</sup>, 2004 for overall completion.

More than simply an issue of longer durations, sporadic and piecemeal performance, inclement weather, poor access and egregious delays by predecessor contractors, the fact is that the work, or at least the promise of work, is now being stacked due to the unwillingness to recognize the true impact to the performance durations. This stacking will ultimately exacerbate planned productivity, resulting in substantive labor overruns.

Given that the schedule projects an impacted performance completion of October 2004 so early in the impact analysis, and noting

- that the above noted dates are largely eclipsed,
- that future logic will be hindered by poor performance from the steel, masonry and roofing contractors,
- that the steel start dates, in this schedule, will not start on the dates suggested
- that the actual time of termination was a month from the dates currently projected, in November 2004,

there appears substantive basis to suggest that IRSD, EDiS and possibly BMG did not objectively review McDaniel's performance and, as a consequence, unfairly terminated McDaniel's contract. Given the preponderance of issues of critical delay prior to McDaniel's performance and the progress achieved by McDaniel prior to termination the possibility of termination to obfuscate active interference and untimely resolved delay impacts is a possibility.

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As of the April 15<sup>th</sup>, 2003 EDiS project meeting NDK continues to focus on areas A, E, D and C, with F and B still suspended until A, C, D and E areas are ready. The concern is that why was NDK not asked to accelerate and add labor rather than directed to ignore a sizable portion of the contract (Buildings F & B). In essence by not taking the very same actions that were implemented with McDaniel, the Owner and EDiS facilitated failure to progress the foundations, which, accompanied by the time lost due to incorrect concrete placement, and the belated fabrication of steel, followed by untimely roofing performance, are the critical impacts to progress.

At this juncture in the contract, April of 2003, McDaniel begins to supply basis of impact, and notice of claims, to the IRSD/EDiS. Specifically on April 22<sup>nd</sup>, 2003 McDaniel notifies EDiS:

Since last December we have been delayed by the lack of progress by the concrete contractor. The (2) main problems have been his lack of manpower and his inability to pour the footer in the correct places. Unfortunately we will be forced to pull again and stop work again.

We can't finish any of the wings because of numerous loose ends. For example C, D and E wings need stone to be installed. Also in A I need the footers to be installed correctly and with no loose ends.

My biggest concern is that the steel will be here shortly and then I won't be able to work in this area again. Everyday the job gets farther behind due to lack of work by the contractor and everyday our costs increase.

On the following day, April 23<sup>rd</sup>, 2003, McDaniel completed F Wing storm drainage and sanitary waste - vent piping, and tested same.

Rather than steel arriving April 21<sup>st</sup>, 2003, as referenced in the March reports, or May 12<sup>th</sup>, 2003 as referenced in the April Owner report from EDiS, in fact, as of May 1<sup>st</sup> 2003 further questions, incorporated in Murphy RFI #25 were being posed regarding Area "B" structural steel. On the 2<sup>nd</sup> of May RFI #26, dealing with Area F structural steel clarification was transmitted, and in request Murphy noted that failure to expedite response could delay the project.

On the 5<sup>th</sup> of May 2003 EDiS confirms that NDK is in fact impacting McDaniel performance, but references the requirement of contractors to layout and coordinate their work.

Oddly McDaniel did not complain of failure in layout or coordination, simply McDaniel was noting the continued failure of NDK to staff the project and the undeniable delay it had caused to the project that would ultimately result in critical delays to the project.

EDiS closes their response to McDaniel's notice by noting that they believed the issues of impact, noted in McDaniel's letter, would be rectified by the end of April. As we have seen from the size of the delays and their broad impact on work to date there is literally no way that the five months of lost critical performance to date could be mitigated with the management, and contractors, discussed to date.

In fact if it was the interior to right a modicum of the impact incurred to date the compression necessary, if the substantial completion milestone were not to be extended, would amount to a constructive acceleration of McDaniel's contract.

As a follow up to their initial notice, and response to EDiS's response of May 5<sup>th</sup>, on the 8<sup>th</sup> of May McDaniel's sets forth a seminal notice of impact covering the impact of events to date:

We previously wrote you on April 22<sup>nd</sup>, 2003 to advise you of the delays on the project and how they are affecting our progress. Pursuant to paragraph 4.7 of the General Conditions, we write to formalize our claim with the School District for an extension of time (Paragraph 4.7.8) and additional cost (Paragraph 4.7.7) as a result of delays and inefficiencies at the Project.

As you are aware, Specification Section 1305 sets forth the terms and provisions concerning the construction schedule. In particular paragraph 1.1 indicates that:

The contractor agrees to adhere to intermediate milestone dates of substantial completion and final completion established herein. The contractor also understands that all work must be performed in an orderly and closely coordinated sequence in order to achieve the specified milestone and completion dates, and the contractor hereby agrees to perform his work in conformance with his pre bid construction schedule established herein or with the then current an approved Project Schedule.

Attached to Section 1305 is a schedule which sets forth the following activities start and finish dates:

Activity	Start	Finish
Footers, Foundation Walls	10/23/02	1/14/03
Under slab Utilities	12/4/02	2/11/03
Slab on Grade	1/15/03	4/8/03
Erect Structural Steel	2/26/03	5/6/03

In preparing its bid to the school district for the plumbing and mechanical work, McDaniel reviewed specifications, including the General Conditions and Section 1305, and relied on them to determine its price for the work. Thereafter, McDaniel executed a contract with the School District, which incorporated the specifications and the expectation that the Project would proceed as set forth in the schedule. As set forth below, the Project has not proceeded in the manner required by the initial schedule.

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On September 17<sup>th</sup>, 2002, at progress meeting number 2 EDiS issued and reviewed a schedule data date of September 18<sup>th</sup>, 2002. During the meeting, the Owner and EDiS, among others, elected to extend the duration of the footers and piers for Area A by three weeks. This decision was the first of several circumstances delaying the underground work to be performed by McDaniel.

On October 29<sup>th</sup>, 2002, EDiS issue an updated schedule data date of October 3<sup>rd</sup>, 2002, which revised dates for, among others things, the initial phase of work, including Area A. During that meeting it was stated that layout for the building footers would start by November 1<sup>st</sup>, 2002, but that the work might be impacted by weather. It was expected that execution of footers in Area A would start on November 3<sup>rd</sup>, 2002. As we know from the meeting minutes dated November 26<sup>th</sup>, 2002 (Progress Meeting No. 7) The November 7<sup>th</sup> date did not hold.

Activity	Start
Footers, Foundation Walls	11/21/02 (Actual)
Under slab Utilities	12/20/02
Slab on Grade	1/14/03
Erect Structural Steel	2/4/03

On or about December 2<sup>nd</sup>, 2002 McDaniel submitted to you an activity schedule, which set forth expedited start and completion dates for the work under our contract. We specifically identified work activities for the various areas of the Project.

For example we expected to install our underground plumbing in Area A starting December 12<sup>th</sup>, 2002 and finishing January 1<sup>st</sup>, 2003. Similarly for Areas C, F and B, we show start and finish dates for underground work and other activities. As I am sure you are aware, none of the above dates have been met. In fact footers for Areas A, C, D and E were only recently completed. With respect to area F, only part of the exterior footing has been completed. No Footings have been installed in Area B.

Presently there is not steel erection on the Project even though, according to your November 19<sup>th</sup>, 2002 schedule, the steel erection should have been completed by April 1<sup>st</sup>, 2003. With respect to the slab on grade, no work has started, nor has any stone been placed in any area of the Project so that McDaniel can proceed with his underground utility work.

The initial contract schedule indicates that our underground utility work was to begin on December 4<sup>th</sup>, 2002 and finish February 11, 2003. None of this work has started, let alone been completed, because of lack of progress by the owner's concrete contractor. As a result McDaniel Plumbing and Heating has been forced to find other work to perform, which is out of sequence with its original bid proposal to the owners.

In view of the above, we expect the owner to provide, at this point in time, a five (5) month extension of the completion of our work. Additionally we expect an adjustment to our contract price for the delays and inefficiencies occurring on the Project. We intend to provide you with details concerning our additional costs including labor

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overruns, extended field conditions costs and extended home office costs to account for the delays caused by with the owner or its concrete contractor. We are in the process of determining these additional costs and will transmit them to you once they are finalized. Please provide us with the owner's response in accordance with the provisions of Article 4.7 of the General Conditions.

On May 7<sup>th</sup>, 2003 McDaniel' responded to EDiS' re request for information regarding dimensions and location of required roof openings, initially requested by the steel fabricator in their RFI # 26 dated May 2<sup>nd</sup>, 2003. At that time McDaniel's note that they had previously marked up and transmitted a set of drawings depicting the openings and penetrations required.

The project meeting number 19, dated May 27<sup>th</sup>, 2003, nearly three weeks past the second McDaniel notice, and the project continues to languish:

- Steel erection has started
- Conectiv will be forwarding a proposal to the owner for permanent electrical service
- EDiS would like to move towards getting the M/E room floor poured as soon as possible
- Weather has delayed steel erection by three days
- Enterprise will work with NDK to clean footings so that block foundations can be installed

Clearly, from these references, as of May 27<sup>th</sup>, 2003, some nine months into the contract performance period, or 42% of the contract performance duration exhausted, and with foundation walls still ongoing, while, as noted in the McDaniel letter of May 8<sup>th</sup>, the footings are only partially complete in B and yet to start in F, the steel erection has commence. In fact Meeting 17 dated April 29<sup>th</sup>, 2003 compared to meeting 18 May 13<sup>th</sup>, 2003 brackets the period of steel erection while the Superintendent's meeting minutes from May 12<sup>th</sup>, 2003 reference a May 9<sup>th</sup> start and the EDiS Monthly report for May notes completion on or about June 9<sup>th</sup>, 2003 for Building A. Given that all steel was to have completed by May 6<sup>th</sup>, the completion of only A on the 9<sup>th</sup> of June is a stark contrast.

As referenced earlier, that steel commenced as of May 13<sup>th</sup>, 2003, only confirms the slippage from the original start date of February 23<sup>rd</sup>, 2003, or a net loss of three months. Note that the five month overall delay being claimed will result from delinquent footing and foundation impact on the ability to complete the steel, pour slabs and being masonry in earnest and the subsequent impact on roofing.

On May 27<sup>th</sup>, 2003 McDaniel tests Area F Boiler Room 6" fire and 4" Domestic Water Supply.

The monthly EDiS project report for May 2003 notes that

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- The steel erection will complete in A building, and work progressed on the C building steel, by the 9<sup>th</sup> of June 2003,
- Areas A, D and C are prepped and ready for concrete pours. All should be done by June 13<sup>th</sup>.
- Foundation concrete and masonry are being performed in B and F,
- The project remains ten weeks behind schedule

The ten week EDiS assessment of impact, based on a May 6<sup>th</sup> baseline completion for a two and a half month performance period would suggest a minimum of three months impact. Noting that slabs were to have been complete May 8<sup>th</sup>, after a performance duration of three months, and in reality not a single slab was placed as of the end of May would suggest, again, three months impact.

Despite the resounding basis for a thirteen week delay impact at the conclusion of May, the Superintendents report notes, only weeks earlier on May 12<sup>th</sup>, 2003, a five week delay, while the Building and Ground's meeting minutes of May 13<sup>th</sup> references no impact.

Clearly, given the prevalence of eclipsed milestone dates there can be no basis of an impact assessment of less than three months, and surely not five weeks or zero weeks. Possibly the inability of the Superintendent, or Building and Grounds to receive accurate input, or report same, is one of the reasons why the Owner and their agents unfairly perceive McDaniel as a stand alone impact to this contract outside of select weather impacts. Given the number of reported impacts and the evident failings of NDK, so early in the project one would have to question how the owner considered McDaniel in default.

By the 3<sup>rd</sup> of June 2003 the project would have been under construction for more than nine of the overall twenty one months, or slightly under 50% of performance time consumed. Per the baseline schedule the roofing should have been complete, curtain wall in progress and interior finishes starting in earnest. In actuality, as of this date we do not have steel complete in any building with A nearing completion and C to start June 12<sup>th</sup> (MoM 20), otherwise there is no progress on roofing, and little on above grade masonry, slabs while the building is without permanent power, yet another impediment to McDaniel's timely performance of the contract.

To that end, on the 3<sup>rd</sup> of June 2003 Frank McHenry of McDaniel notes:

There is no temporary electric on site as per spec section 01511. Therefore in order to continue working we have rented a generator and will be billing you for it plus the daily labor to service the generator. This will continue until temporary electric is installed as per specs (No longer than a 60' cord needed)

The area F kitchen and toilet under slab sanitary waste and vent piping passes test on the 4<sup>th</sup> of June 2003.

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On June 9<sup>th</sup>, 2003 McDaniel for the first time is installing gas piping in block walls in Area C, while the steel erection continues in Area A, and Area B requires backfill. The following day on the 10<sup>th</sup> of June underground is complete in F, Area A underground continues to be laid out and neither steel nor concrete workers are on the project this day. On the 13<sup>th</sup> of June a concrete slab was poured in Area E.

By the 11<sup>th</sup> of June Area F under ground was complete and McDaniel remobilizes to Area A to commence above ground rough.

Yet as Area F underground is completing, on the 10<sup>th</sup> of June 2003 McDaniel cannot start Area B (Incomplete footer installation) or continue Area A (Steel work overhead). Given that all foundations were to have been completed in January 2003 the Area A delays and those in Area F have extended this critical work scope five months.

At the project meeting of June 24<sup>th</sup>, 2007 McDaniel continued to reference site conditions that were impacting their performance (Item 17.3.14), this time the wet nature of the building F pad that is waylaying their ability to place underground piping. Given that Croll hasn't been on the job for several weeks, that the site piping remains incomplete, months beyond the scheduled dates, it would appear that the site is suffering from abandoned site water management and the under slab MEP is being correspondingly impacted which will likely extend the performance time of this installation, resulting in higher labor hour tally.

Additionally, during the June 24<sup>th</sup>, 2003 meeting it is noted that:

- E & F Steel have no been delivered to the site
- A, B, E & F have not received any slab pours
- Second floor of A are (sic) to be poured on 7-2-03

As of the 26<sup>th</sup> of June 2003 (McDaniel Reporting) McDaniel has begun duct installation, on the 2<sup>nd</sup> floor of building A, off of metal deck (a significant impediment to productive installation), setting floor and roof drains in building A 2<sup>nd</sup> floor, and continuing to forward underground in B.

By the 3<sup>rd</sup> of July steel decking in Areas C & D have not been set, while McDaniel continues underground in F and domestic water hangars in C.

On the 7<sup>th</sup> of July McDaniel places C Wing second floor sanitary and vent under test

By the 8<sup>th</sup> of July gas hangars and piping is progressing overhead in C, but in that daily report McDaniel cites the lack of adequate steel erection forces and the need for NDK to backfill B to allow underground to proceed in earnest. As of July 8<sup>th</sup> foundations appear to have been completed in B almost six months behind schedule:

Activity	Start	End	2002	2003		
			Q4	Q1	Q2	Q
Footers, Foundation Walls	11/21/02	07/15/03				
Concrete A Administration	11/21/02	04/25/03				
Concrete C Classrooms	02/17/03	04/18/03				
Concrete D Classrooms	02/17/03	04/25/03				
Concrete E Classrooms	02/17/03	04/25/03				
Concrete F Gym/Cafe/Mech Room	05/01/03	07/15/03				
Concrete - B Auditorium- AG	06/03/03	07/08/03				

The July 8<sup>th</sup> project meeting notes that Croll has not remobilized the project on the 26<sup>th</sup> of June as previously promised and, in fact, as of that date, been absent from the site for more than a month. EDiS notes in the July 8<sup>th</sup>, 2003 item 21.2.1:

Area C deck need to be completed by Murphy Steel. Once the deck is completed the other contractors including masonry, mechanical, electrical and metal studs will have areas to work.

Given the need to prep underground, building pads, site work, roadway, lay down areas, etc..., when Croll is absent the overall project performance suffers.

The July 11<sup>th</sup> daily report notes a number of impacts arising from NDK's failed performance, including, rough grading F to allow drain and cleanout installation and slab pours, backfill of ditches in E to allow overall underground. Note that project meeting minutes had previously referenced these areas as complete, but it appears that come back work is necessary due to NDK's inability to keep up with the contract schedule, now many months behind the baseline pace.

On July 15<sup>th</sup>, 2003 Gas Mains at the first level of C are under test while the underground storm piping is completed in Area F.

As of the 16<sup>th</sup> of July McDaniel continues underground in A (Water is required to be pumped this morning prior to proceeding) while ductwork and domestic water continue in Area C.

The July 21<sup>st</sup> - August 4<sup>th</sup>, 2003 look ahead sequencing noted that NDK has not completed:

- Area B foundations,
- A sub grade prep,
- Second floor C deck pour,
- 2<sup>nd</sup> floor D prep and pour,
- Steel prep Area F,
- Pour mechanical rooms in Area F

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Additional areas of noted delay are the mason's delayed completion of F foundation walls, the remaining steel erection in Areas E & F and the need to set stair in C, D and E, and the failure to complete the site storm sewer lines that would allow building drainage once roofs have been installed, or at least, now, to relieve some of the flow from the roof decks.

As of July 25<sup>th</sup>, 2003 ductwork has commenced on the 2<sup>nd</sup> floor of C, an area without any roof (Note Mtg. 22 wherein CTA is notified that work in Areas C, D & E will be needed within the next 4-6 weeks). Especially disconcerting is that NDK, the delinquent site concrete contractor is performing the metal stud erection that is impacting portions of C pours and generally will further waylay future project progress.

The continued inability of EDiS or the owner to promulgate NDK to perform has, along with the undermining by the steel contractor, been the critical impact to the project to date.

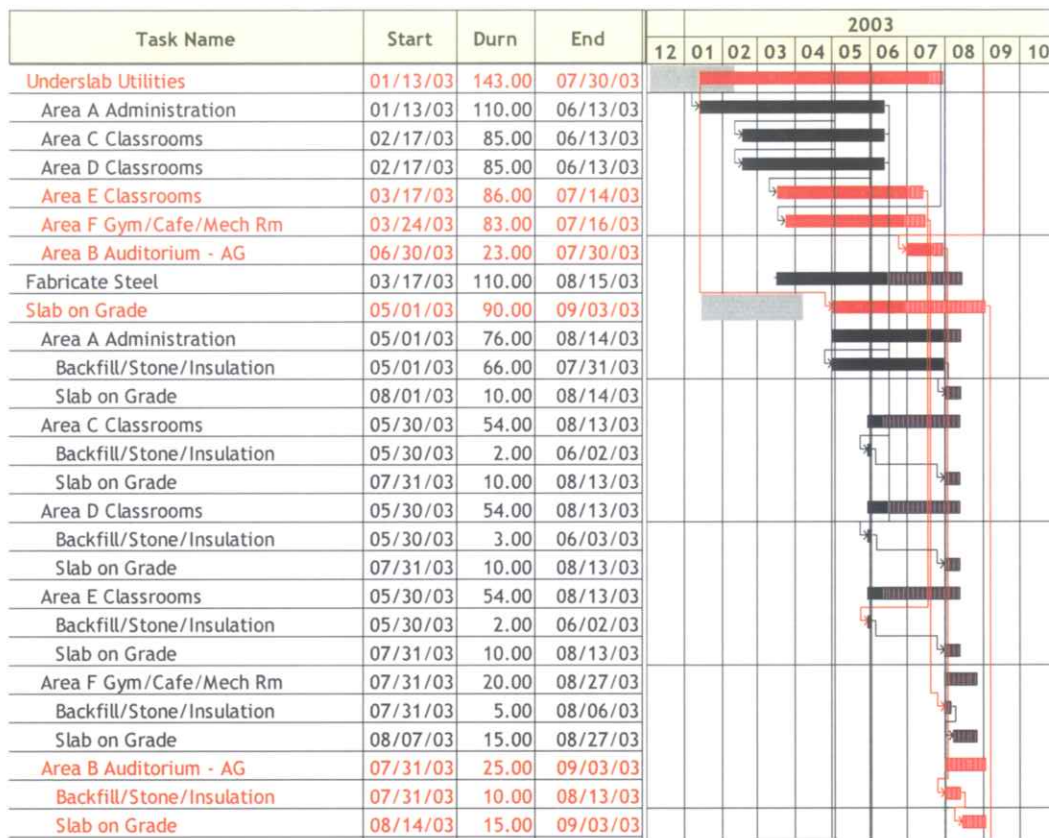
Based on the information in the July reporting the following excerpts represent actual progress (MPH 08.TLP):

Task Name	Start	Durn	End	2002			2003							
				10	11	12	01	02	03	04	05	06	07	08
<b>Overall Performance Duration</b>	<b>08/05/02</b>	<b>570.00</b>	<b>10/08/04</b>											
Mobilize	08/05/02	5.00	08/09/02											
Start Construction	08/09/02	0.00	08/09/02											
Prepare Building Pad	09/24/02	172.00	05/21/03											
<b>Footers, Foundation Walls</b>	<b>11/21/02</b>	<b>202.00</b>	<b>08/29/03</b>											
Concrete A Administration	11/21/02	115.00	04/30/03											
Layout Foundations	11/21/02	6.00	11/28/02											
Footers & Piers	11/21/02	115.00	04/30/03											
Block Walls Below Grade	01/28/03	67.00	04/30/03											
Concrete C Classrooms	02/17/03	53.00	04/30/03											
Footers & Piers	02/17/03	53.00	04/30/03											
Block Walls Below Grade	03/17/03	33.00	04/30/03											
Concrete D Classrooms	02/17/03	53.00	04/30/03											
Footers & Piers	02/17/03	53.00	04/30/03											
Block Walls Below Grade	04/01/03	22.00	04/30/03											
Concrete E Classrooms	02/17/03	75.00	05/30/03											
Footers & Piers	02/17/03	53.00	04/30/03											
Block Walls Below Grade	03/17/03	55.00	05/30/03											
Concrete F Gym/Cafe/Mech Room	05/13/03	54.00	07/25/03											
Footers & Piers	05/13/03	36.00	07/01/03											
Block Walls Below Grade	07/14/03	10.00	07/25/03											
<b>Concrete - B Auditorium - AG</b>	<b>05/13/03</b>	<b>79.00</b>	<b>08/29/03</b>											
<b>Footers &amp; Piers</b>	<b>05/13/03</b>	<b>67.50</b>	<b>08/14/03</b>											
<b>Block Walls Below Grade</b>	<b>06/23/03</b>	<b>50.00</b>	<b>08/29/03</b>											



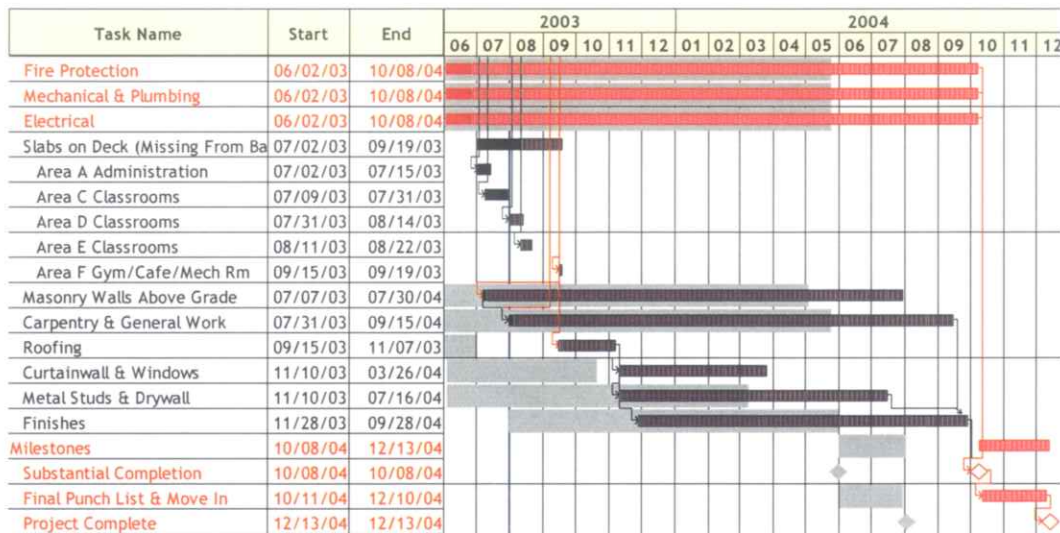
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Clearly, from this analysis the project has slipped four and a half months from May 31<sup>st</sup>, 2004 to an impacted contract substantial completion of October 8<sup>th</sup>, 2004, and the roofing contract, which will yield further impacts, has yet to begin.

The August 4<sup>th</sup> schedule look ahead largely mimics the July 21<sup>st</sup> variant due to failure of NDK and Murphy to perform the bulk of previously projected activities. The performance outlined, as of August 4<sup>th</sup>, 2003, is:

- Pour first floor A 8/11/03 (*Scheduled 1/15/03, six and a half month impact*)
- Complete below grade concrete in Area B & backfill foundations (*Scheduled 1/14/03, seven month impact*)
- Prep and Pour 2<sup>nd</sup> floor C 7/29/03 (*Scheduled 2/11/- 24/2003 [7/03 Update] five month impact*)
- Prep and Pour 2<sup>nd</sup> floor D 8/4/03 (*Scheduled 2/25/- 3/10/2003 [7/03 Update] five month impact*)
- Complete Decking Area E (*Scheduled completion of steel erection 5/6/03 [Baseline] three month impact.*)
- Complete Area F Steel Erection 8/30/03 (*Scheduled 5/6/03, four month impact*)

Noting that the building is to be completed in less than nine months, and that a total of thirteen months has been expended, to still have partial steel erection, slab pours and no roof is a serious critical impact, and assuredly has hampered contract performance.

In addition these "projected" accomplishments (8/4/03 schedule look ahead) demonstrate that the July 31<sup>st</sup>, 2003 impact update is possibly, substantively conservative and actual progress, as noted in each building above is between five and seven months behind schedule. Though some work can proceed ahead of the impacted

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pace, the net result is that the whole building has to progress per the plan, and if not, equitable adjustments must be allocated in a timely fashion.

The August 5<sup>th</sup>, 2003 EDiS CPM Schedule update number 23: "Planned work for 2003-08-04 to 2003-08-18" notes that:

Concrete - NDK

- D: 2nd floor pour NOT DONE
- C: 2<sup>nd</sup> floor pour done 2003-07-28
- C: Ext metal studs started
- B: Below grade concrete and backfill NOT COMPLETE
- A: 1st floor pour NOT DONE
- Penthouse floors have not been poured
- F: Mechanical/Elect rooms not poured

Murphy

- F: Erection not done
- Stairs not complete

Enterprise Masonry

- C: Begin brick 8/4
- A: Complete 2nd floor walls on 8/18
- C: Start 2nd floor CMU walls
- A: Start 1st floor CMU walls - waiting on slab on grade
- Complete all stair wells
- Complete wall at end of area E

As if to demonstrate how the record maintained in the progress meetings does not necessarily reflect the true project impact the A building steel, previously noted to have completed on June 30<sup>th</sup>, 2003 remains ongoing through August 11<sup>th</sup>, 2003, more than three months behind schedule for the earliest building in the erection sequence:

8/11/03 Bldg & Grounds Meeting Minutes

- A: All steel and decking complete, steel framing in classroom
- D: Steel framing to start next week

Possibly in an effort to ameliorate the delay impact EDiS's August 2003 schedule update has relinquished the month of float/turnover between substantial and final completion afforded in the baseline schedule.

C and High A roofing commencement was set for September 8<sup>th</sup>, 2003, on the 13<sup>th</sup> of August by EDiS in their direction to all contractors.

8/13/03 - EDiS Ltr: McCone to All Contractors

- C: Ext metal studs, sheathing and masonry are proceeding. Roofer has to get going
- Roofer promises to deliver and stage materials for area C, area A high roof and C penthouse on 2003-09-02. Roofing will start 2003-09-08.



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The schedule activity look ahead listing of August 19<sup>th</sup> appears to regress with B below grade concrete shown incomplete versus the backfill of same on prior look aheads. Area A slab on grade is referenced to be complete August 27<sup>th</sup>, 2003, nearing five months beyond the baseline date.

Not that NDK is delaying only the foundations and slabs, the job meeting of August 19<sup>th</sup> notes that NDK has completed exterior studding of Area C, but has yet to address the C to A high roof transition necessary for commencing the first area of roofing on the project. That the building would be studded and sheathed, to any extent, without a roof, is poor logic and will hinder mechanical overhead installations.

Oddly with overhead mechanical performance proceeding in areas C, D, E and A (Note areas F and B are under construction by Murphy and Kemenash and thereby barring McDaniel performance) on the 20<sup>th</sup> of August 2003, McDaniel receives a notice from EDiS that they are falling behind schedule. This is the first of many erroneously founded assertions of delay by EDiS who, faced with failed performance by NDK, Murphy and CTA that has generated to date five months of impact, has the temerity to argue McDaniel culpability.

The following excerpt from the August 19<sup>th</sup>, 2003 meeting #24 illustrates the failed progress to date by each of these contractors and the ultimatum by EDiS the Roofing will start in C and A building as of September 8<sup>th</sup>, 2003:

8/19/03 CPM M 24

NDK - Concrete

A: 2nd floor poured, this is scheduled for August 27<sup>th</sup>, 2003 (*Omitted from baseline. Per the second schedule this should have been complete February 13<sup>th</sup>, 2003, 6+ months impact*)

F: Remainder will be poured after steel is complete (*Omitted from baseline. Per the second schedule this should have been complete May 8<sup>th</sup>, 2003, 3 months impact*)

B: Will be ready for steel by end of August (*Omitted from baseline. Per the second schedule this should have been complete May 1<sup>st</sup>, 2003, 3+ months impact*)

Murphy - Steel

F: Erection started 7/13/03 (*Per the second schedule this should have been complete April 17<sup>th</sup>, 2003, 4+ months impact*)

B: Erection will start 9/15/03 (*Per the second schedule this should have been complete May 2nd, 2003, 5+ months impact*)

Enterprise Masonry

A: Cannot work on 1st floor until poured. Focusing on ext masonry walls

A: 2nd floor mostly complete

C: Brick veneer in progress

D: Brick veneer in progress

Drywall

A: High to low roof transition: NOT STARTED - LATE

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The fact that, as of August 19<sup>th</sup>, 2003, no building is under roof, and that the project is two months beyond the planned roofing completion, that steel will, likewise, is completing more than five months late and that foundations are as much as six to seven months late, demonstrates that the critical delays to the contract were well before McDaniel's involvement.

That EDiS' schedule attached to the May 24<sup>th</sup>, 2003 report references an August 2<sup>nd</sup> 2004 Final Completion, affording no extension, is requiring compressed performance durations in an attempt to ameliorate the poor performance to date by other predecessor contractors, not McDaniels.

EDiS apparently misplaced critique of McDaniel appears to be founded in their hopes of constructively forcing McDaniel to work future sequences that will ameliorate sizable, mounting delays and complete on or near the planned completion milestone.

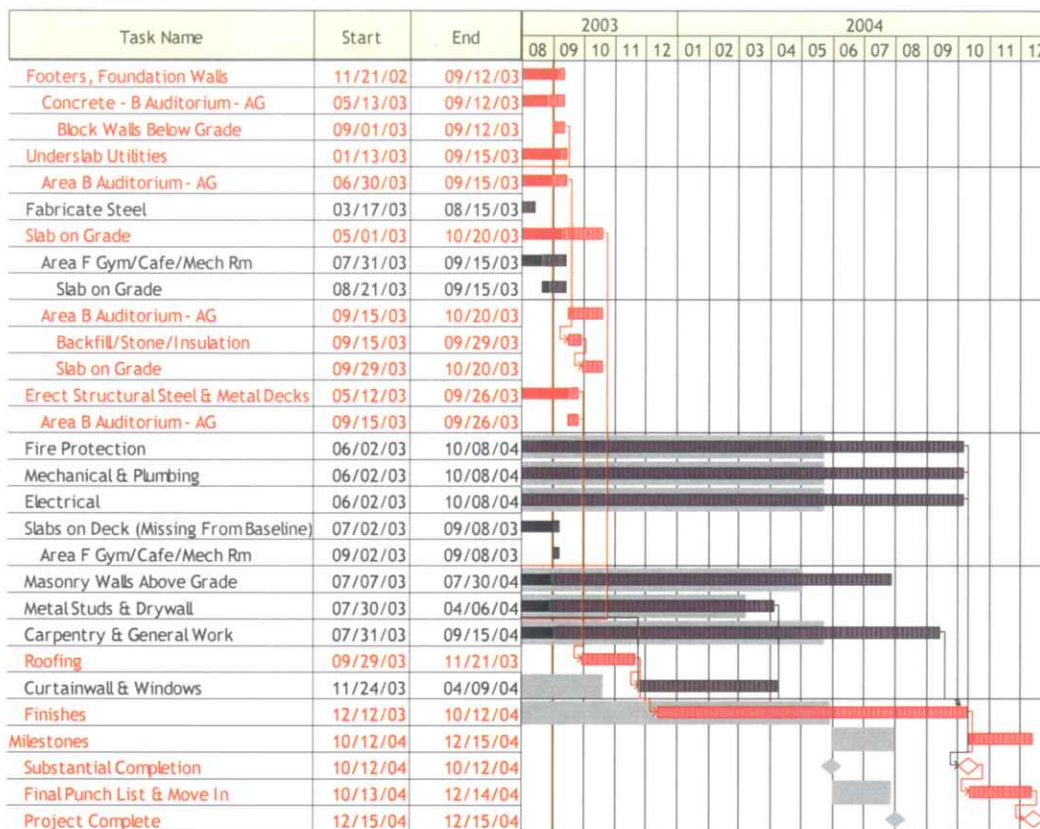
That much of McDaniel's work was required to proceed off of rough grade, or metal deck, to facilitate the level of progress to date is a testament to McDaniel's willingness to perform, sadly this cannot be said for a number of predecessor trades.

On August 27<sup>th</sup>, 2003 the plumbing inspector signs off on underground for Areas F and B.

The August 2003, Monthly EDiS progress report notes, nine months to the schedule project substantial completion, the following progress and future performance dates, which when incorporated in the baseline schedule performance logic, and progress pace by prior contractors, generates the following logic:

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What is important to note from this analysis is that, as of this late date, there is no roofing, or curtain wall, underway that is necessary to continue overhead mechanical construction as of this date. Those rough MEP installations that have been accomplished result solely from the various mechanical trades, among them McDaniel, working out of sequence, in less than favorable conditions, willingness to ameliorate prior delays by others, but that work was largely inefficient and piecemeal.

As noted in the August 13<sup>th</sup>, 2003 EDiS/McCone letter the roofer must be prepped to proceed no later than September 5<sup>th</sup>, 2003. Even if this does transpire there is still a net four month critical delay from the planned roofing commencement in the baseline schedule and ultimately more when the actual roofing performance requires more than four times the planned duration resulting in roofing as late as late June of 2004. Additionally, if the roofing experiences delays, like every prior critical construction component the winter of 2003/2004 could further impede progress and therein enclosed work areas to forward both rough and finish construction.

Finally, the prior EDiS demand that conditioned air be on by August of 2003 appear nonsensical in retrospect given the lack of siding and roofs.



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As of September 2<sup>nd</sup> 2003 the project meeting notes that CTA (Roofer) is scheduled to begin September 10<sup>th</sup>, 2003. Additionally Building F steel, previously reported as complete, in fact, is ongoing, while building B steel erection has not commenced.

9/2/03 CPM Meeting 25

Concrete

- A: Remainder COMPLETE
- B: Footers and piers not complete
- F: Mechanical/Elect and locker room areas to be poured on 9/4

Structural Steel

- F: Started 7/31. Decking on gym and aux gym NOT DONE
- B: Erection NOT STARTED

Enterprise Masonry

- A: 2nd floor - mostly done.
- C: Brick veneer ongoing
- D: brick veneer ongoing

Roofing

- A, C & D ready for roofing
- A: Scheduled to begin 9/10
- C: Scheduled to begin 9/10

The September 2003 EDiS Monthly Project Status Report references the following progress by building:

- Area A 1st floor slab on grade complete  
2nd floor masonry walls complete  
Interior metal studs started  
Penthouse: concrete and masonry complete, HVAC units set
- Area C Exterior metal studs and sheathing complete  
Interior metal studs nearly complete  
Brick veneer 85%  
Penthouse: Concrete & masonry complete, HVAC units set
- Area D 2nd floor concrete deck complete  
Ext studs and sheathing complete  
Inst of interior studs ongoing  
Penthouse: concrete & masonry complete, HVAC units set
- Area E 2nd floor concrete deck complete  
Penthouse: concrete & masonry complete, HVAC units set
- Area F Stl erect complete  
Gym & Aux gym need roof decking  
Slab on grade has been placed in Cafeteria; other areas have not been poured.
- Area B Underground utilities nearly complete  
Footers & piers complete  
Stl erection scheduled for mid-Sept.

During the September 8<sup>th</sup>, 2003 Building & Grounds Meeting Minutes Mr. Weer states:

"The project is moving along well, and the building should be weather-tight soon...

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Mr. Weer is confident that this building will be ready to open in September."

Obviously to facilitate a September 2004 occupancy the project schedule cannot accommodate any delay, ten weeks, as reported by EDiS, or otherwise. That we have estimated the revised completion at December 15<sup>th</sup>, 2004 would indicate a deviation of some four plus months from the planned project completion date of August 2<sup>nd</sup>, 2004 barring any owner conception that the building will be open in September.

More than the failure of Weer to state, or EDiS to apprise IRSD of the actual impact is the unwillingness of anyone on the EDiS/IRSD team to recognize and timely administrate mounting delays by requiring improved performance by predecessor contractors or extending the contract performance period.

Weer's commentary is a stark contrast to continued, delinquent progress reported only eight days later including during project meeting #26 dated September 16<sup>th</sup>, 2003, including , but not limited to,

9/16/03 CPMM 26

Concrete

F: Mechanical/Elect and Locker Rooms poured 9/4/03

B: Kitchen and Main Gym will be poured next (*Planned completion 4/8/03 - 5+ Months Delay*)

Murphy Steel

F: Erection complete on 9/12/03 (*Planned completion 5/6/03 - 4+ Months Delay*)

B: Will begin 9/22/03 (*Planned completion 4/8/03 - 5+ Months Delay*)

Masonry

A: Walls not yet begun

B: Below-grade CMU complete

F: CMU walls for mechanical/electrical room started

Drywall

E: Ext metal studs and sheathing started

C: Roof Blocking complete

D: Roof blocking ongoing

Roofing

CTA did not attend meeting

CTA started roofing on September 11<sup>th</sup>, 2003 and will be working in areas

A, C and D (*Planned commencement 5/7/03 - 4+ Months Delay*)

Clearly the next critical step in the progress of the project is the building enclosure, but most notably the roof. As referenced earlier the roofer commenced on the 11<sup>th</sup> of September, but his performance is sporadic as noted in the following McDaniel Daily Report:

9/27/03 MPH DJR

"Roofer has not been on job all week 9/22 - 9/26/03. Need roof installed on

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penthouse in Areas C-D-E"

The following is a representation of actual progress as of September 30<sup>th</sup>, 2003.

9/30/03 CPM Meeting 27

Concrete

B: Scheduled for next week

Steel Erection

B: Started 9/22/03

Roofing

Started 9/10. Will proceed C->A->D->E

CTA not present at meeting

CTA needs to return to the job

Drywall

E: Ext metal studs & sheathing ongoing

C: Roof blocking complete

D: Roof blocking complete

E: Installation of interior studs ongoing

2A: Installation of metal studs on top of CMU walls

Though the roofer did mobilize the site, as of the 11<sup>th</sup> of September it does not appear any roofing has commenced and as noted above, from McDaniel's daily report as of September 27<sup>th</sup>, 2003, this is impacting penthouse construction as well as actively interfering with interior mechanical construction (protection of installations in place) throughout the project.

Additionally the planned roofing duration of two months will be grossly exceeded over the next nine months, due to among other issues the impact of adverse cold weather, further exacerbating any chance of McDaniel working in a water-tight building, critical for commencing water sensitive interior ductwork, insulation and equipment hang.

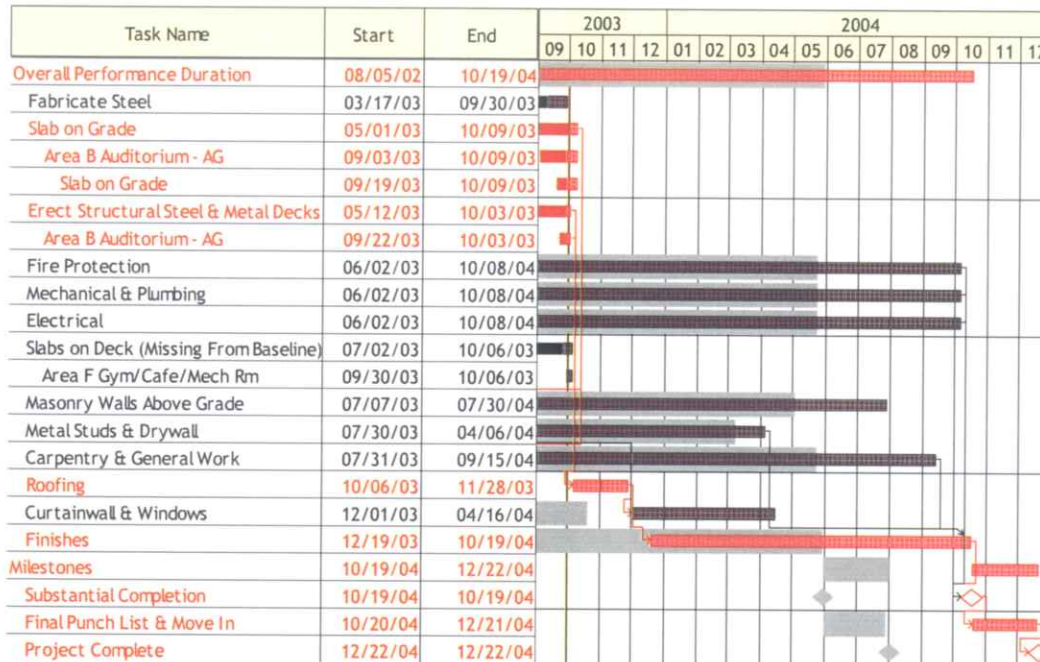
Finally, the baseline schedule anticipated commencement of mechanical rough four months prior to the placement of the roof thereby insuring that the majority of initial mechanical installations would be riser construction, carrier, hangars, rough piping and plumbing.

The roofer, like McDaniel, had been initially impacted by the late concrete and steel performance, but unlike McDaniel the roofer could have mobilized well before September 2003, but had chosen not to. The impact to McDaniel is working in an unprotected building due to an initial four month delays and later an additional seven months of unforeseen and extended performance.

As a result of the roofer's choice not to mobilize effectively the roof is now on the project critical path and the substantial completion date (using a planned overall



performance of two months) has now been pushed to the 19<sup>th</sup> of October 2004, whereas the final completion would fall on the 22<sup>nd</sup> of December 2004.



Another impact to McDaniel's performance, aside from the lack of a roof, B building slab, and exterior enclosure throughout is the impact of EDiS failure to recognize the full impact of the delay and as a consequence the constructive acceleration, and corresponding chaotic performance engendered by this constructive abandonment of the management and scheduling effort. That impact, and ensuing chaos, as we will see results in out of sequence performance that further interferes with McDaniel contractually stipulated performance durations and sequences.

The first sign of the out of sequence performance, in contrast to simply delayed performance is the premature commencement of the mason in the building prior to initially planned mechanical rough install periods.

9/29/03 MPH DJR: "Brick layers are putting up block walls in our way."

The October 14<sup>th</sup>, 2003 project meeting references ongoing delays to the completion of building B steel:

#### Steel Erection

B: Murphy Steel started B on 9/22/03; However they encountered problems with long spans over the theatre. Murphy will b on site 10/15/03, to continue erection in Area B.